

REMARKS

Claims 1-17 remain in the application, claims 18-21 having been canceled. Independent claims 1 and 14 have been amended to include the limitations of wherein both the n-type gate material and the p-type gate material are exposed to the selective removal process. Support for these amendments can be found in FIG. 1b of the present application. No new subject matter has been added with these amendments.

A. 35 U.S.C. § 102(e)

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Torii- Claims 1-2, 8-16

Claims 1-2, 8-16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the U.S. Publication of Torii, et al. (hereinafter “Torii”) (Office Action, page 2). Claims 1 and 14, from which claims 2, 8-13 and 15-16 depend respectively, have been amended to include the limitations of both the n-type and the p-type gate materials being exposed to the selective

removal process. Since Torii does not teach or suggest all of the limitations of amended claims 1 and 14, it is respectfully submitted that claims 1-2 and 8-16 are not anticipated by Torii. Thus, reconsideration and withdrawal of the Section 102(e) rejection of claims 1-2, 8-16 are respectfully requested.

C. 35 U.S.C. § 103(a)

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Torii-Claims 3-7, 17

Claims 3-7 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Torii. The Office contends it would have been obvious to optimize the wet etch parameters of Torii (to which the Applicants do not concede).

However, independent claims 1 and 14 have been amended as described above. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Because Torii does not teach nor even suggest the limitations of amended claims 1 and 14, from which claims 3-7 and 17 depend respectively, claims 3-7 and 17 are not rendered obvious by Torii.

Thus, reconsideration and withdrawal of the Section 103(a) rejection of claims 3-7, 17 is respectfully requested.

In view of the foregoing remarks, the Applicants request allowance of the application. Please forward further communications to the address of record. If the Examiner needs to contact the below-signed Attorney to further the prosecution of the application, the contact number is (480) 715-5488.

Respectfully submitted,

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